

Subcommittee on Chapter 13 Presumptive Fees for Debtor's Counsel
Lee Davis
Jory Trease
Justin Burton
David T. Berry

4/20/11

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: Presumptive Debtors Attorney Fees : **Chapter 13**
in Chapter 13 Cases. : **Bankruptcy No. 06-50001**
: **En Banc**

COMMITTEE REVIEW OF COMMENTS AND FINAL RECOMENDATIONS

The Subcommittee appointed by the Court of Lee Davis, Jory Trease, Justin Burton and David Berry have reviewed the comments submitted by the various practitioners and has come to the recommendations and conclusions set forth below.

Review of Comments.

Twenty comments have been received regarding the subcommittee's original recommendations. They can be summarized as set forth below.

A. Standard \$2750.00 Presumptive Fee.

1. Chapter 13 Trustees:

a. Trustee Anderson had no comment on the recommendations, but offered an alternative approach.

B. Trustee Cameron: Supportive of increased \$2750 presumptive fee for the Confirmation and Claims Review process (including the financial education certification). He did not support increased presumptive fees for business cases or §362 extend stay motions, suggesting the fee application process be used in such cases.

2. Opposing any presumptive 13 Attorney Fee:

A. Duane Gillman, Docket #23.

3. In favor of an increase to \$2,500.00
 - A. Jennifer Neeleman, Docket #12.
 4. In favor of an increase of \$3,000.00 or more.
 - A. Robert Eder, Sr. (\$4,000), Docket #11.
 - B. Anna Drake (\$3,000.00 in non business cases, \$4,000.00 business), #10..
 - C. Robert Eder (\$3,000.00), #21.
 5. In favor of \$2,750.00 as a minimum Presumptive Debtor's 13 Attorney Fee:
All others.
- B. Business Case Presumptive Fee.

The subcommittee's recommendation for a standard presumptive fee in business cases was not supported by the comments received. A Fee Application per case was the general recommendation from the comments.

C. Menu Item Presumptive Fees.

The recommendation for a presumptive fee for §362(c) extend stay motions was not supported by the comments, and the law is rapidly developing regarding the need for this type of motion. A Fee Application per case is recommended instead of a presumptive fee for this type of action.

However, a limited menu driven list is recommended as per the comments of Jory Trease, Docket #8.

REVISED AND FINAL RECOMMENDATIONS AFTER REVIEW OF COMMENTS

The Subcommittee thanks the Court and all members of the Bar who have commented, both informally and formally in this process. It would appear that the initial recommendation of the Subcommittee has been a lightning rod for comment. After careful review of the comments received, the Subcommittee amends its recommendations as set forth below pursuant to a review of the comments and input received regarding presumptive Chapter 13 Attorney Fees.

- A. Standard Case \$2,750.00 Presumptive Fee remains the recommendation of the subcommittee. Though most comments supported such a \$2750.00 presumptive fee in the standard case, most comments also indicated that a higher fee is probably warranted, and a standard fee of \$3,000.00 is probably justified.

However, the subcommittee believes that the standard fee should reflect a conservative estimation. Fee Applications filed to date on post BAP-CPA cases indicate fees in excess of \$3,000.00 per case is the overwhelming norm. However, there may be some learning curve aspect to these fee applications, and the actual fees per case in the future may slowly decline.

The \$2,750.00 presumptive fee would be for work through confirmation, and for the claims review process that does not result in an actual adversarial hearing. Such fee would also include filing of the final financial planning class certificate.

- B. Business Cases. The subcommittee recommends that no presumptive fees be applied in business cases, and that business cases be by Fee Application.
- C. Limited Menu Item Presumptive Fees. The subcommittee recommends that the menu driven items set forth in the comment of Jory Trease, Docket #8, be adopted by the Court, with the exception of the §362(c) extension provision. Therefore the menu driven recommendations are as follow:

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|----|--|-------------|
| 1. | Request for administrative abatement: | \$ 100.00. |
| 2. | Annual review or status conference: | \$ 250.00 . |
| 3. | General Law and Motion matter requiring
a hearing to be scheduled: | \$ 400.00 |
| 4. | Defending a Relief from Stay Motion. | \$ 500.00 |
| 5. | Motions for Financial Transactions
(Refinance of a home, Sale of a home,
Purchase of Vehicle with financing, etc.) | \$ 600.00 |

D. Presumptive Fees and the Opt In / Opt Out issue.

The Subcommittee recommends that there be no presumption against a fee application being filed and approved in a case in which the case has previously been confirmed with the presumptive fee of \$2,750.00 being awarded in the confirmation order. It is impossible to predict the complexity of a case and the amount of work required in a case when confirmation occurs before secured claims and tax claims and even DSO claims have been filed. The Subcommittee does not believe that this will result in an unusual number of fee applications after confirmation.

E. Fee Applications Should Be Allowed In All Cases.

The adoption of a presumptive Chapter 13 debtor's counsel fee should not affect or be a bar to any Fee Application filed by counsel in any case. Especially in consideration that the overwhelming number of fee applications filed to date have exceeded the \$2,750.00 presumptive fee.

F. Further Review Is Recommended.

The Subcommittee recommends that the issue of Presumptive Fees in Chapter 13 cases be reviewed again in late 2006 or earliest 2007. No post BAP-CPA case has reached the final claims review process, and few have even reached confirmation at this stage. No case, Chapter 13 or 7 or otherwise, has yet undergone the required "audit" process now required under the supervision of the Office of the U.S. Trustee. There are many unknowns, and further review after more experience is gained is required. Finally, the Subcommittee recommends an annual review and comment period to allow for increase costs due to inflation and other factors.

Dated this 3 March 2006 by the Subcommittee on Presumptive Chapter 13 Debtor's Fees.



Lee Davis



Jorey Trease



Justin Burton



David Berry